

*H. Gov. Cogline***OFFICE OF THE GOVERNOR**

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 465-4611

M E M O R A N D U M

TO: HON. CHARLES E. COLE
ATTORNEY GENERAL

FROM: CHARLOT E. THICKSTUN
DIRECTOR, DIVISION OF ELECTIONS

DATE: AUGUST 24, 1992

SUBJECT: PROPOSED APPOINTMENT OF HAROLD BROWN, AS SPECIAL
COUNSEL (IN RE: RECALL APPLICATIONS)

Reference is made to a letter dated August 12, 1992, (copy enclosed for your convenience), from Bruce M. Botelho, Deputy Attorney General, to Harold Brown, purporting to appoint Mr. Brown as "Special Counsel to act on behalf of the State of Alaska to review the sufficiency of the grounds stated in the application for recall of the Governor and the Lieutenant Governor currently pending before the Division of Elections."

I believe that the responsibility for making the decision of whether or not to certify these recall applications, is vested exclusively in the Director or the Division of Elections, by virtue of AS 15.45.540. Moreover, I believe that my authority is limited to the bases of denial of certification specifically enumerated in AS 15.45.550. That section clearly does not make any reference to the sufficiency of the grounds stated in the application.

Not being a lawyer, I am certainly willing to be otherwise persuaded, through the advice of qualified, independent counsel. However, in order to have credibility with the public, such counsel must indeed be truly independent and wholly devoid of any taint of partiality or conflict of interest.

To have the Attorney General, who is appointed by and serves at the pleasure of the Governor, select an "independent counsel", who himself is a former state attorney general, in a case where the Governor and the Lieutenant Governor are targets of a recall effort, seems patently inappropriate and would necessarily be subject to criticism for apparent conflict of interest. Having met and discussed this matter with Mr. Brown, my concerns in this regard have not been alleviated in any way.

Accordingly, I wish to respectfully inform you, that I cannot accept Mr. Harold Brown for the purpose of advising me, in the capacity of Special Counsel, in this matter. Please do not interpret this in any manner as reflecting on Mr. Brown's ability or integrity; rather, this is a judgment call on my part, with respect to the appearance of conflict of interest.

Please be further advised, that unless I receive your express written authorization, on or before close of business August 27, 1992, to hire eminent, out-of-state, independent counsel, to advise me on these issues, I propose to proceed with certification of these recall applications on Friday, August 27, 1992. In the meantime, I will be happy to consult with you or your staff with respect to the manner of selecting such independent counsel. If I do not hear from you otherwise, I will assume that you do not desire to proceed in this manner and will then issue the certifications, which I believe to be appropriate at this time. As you are fully aware, of course, this will still allow any person aggrieved by my determination, to seek judicial review pursuant to AS 15.45.720.

cc: Hon. Pat Ryan, Chief of staff, Office of the Governor
(Personal Attention)
Bruce Botelho, Deputy Attorney General
Harold M. Brown, Heller Ehrman White & McAuliffe

P. 01

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

P.O. BOX K—STATE CAPITOL
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PHONE: (907) 465-3600
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August 12, 1992

RECEIVED

AUG 17 1992

HELLER, EHRMAN,
WHITE & McAULIFFE

Harold Brown, Esq.
Heller Ehrman White & McAuliffe
550 W. 7th Ave., Suite 1900
Anchorage, AK 99501-3571

Dear Mr. Brown:

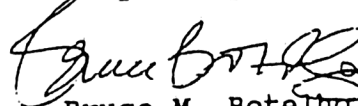
This letter constitutes your appointment as Special Counsel to act on behalf of the State of Alaska to review the sufficiency of the grounds stated in the application for recall of the governor and the lieutenant governor currently pending before the division of elections.

As Special Counsel you are to act independently and exercise your independent professional judgment in rendering your opinion. The opinion should be addressed to Ms. Charlot Thickstun, Director, Division of Elections, through Attorney General Cole.

Enclosed are copies of a State of Alaska professional services contract, setting forth and describing the terms and conditions embodied in this letter of appointment. Please sign and return the copies to the Department of Law.

As you are no doubt aware, this issue is one of major public concern. For that reason, I urge you to render your considered advice with all deliberate speed. On behalf of General Cole, let me express our appreciation for your willingness to accept this appointment as Special Counsel.

Very truly yours,



Bruce M. Botelho
Deputy Attorney General

BMB:djd